

APPEAL NO. 043151
FILED JANUARY 20, 2005

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on August 23, 2004, with the record closing on October 6, 2004. The hearing officer recites that the appellant (claimant) failed to appear at the CCH and failed to respond to a 10-day letter. With regard to the only issue before him the hearing officer determined that the claimant's impairment rating (IR) is 4% as assessed by the designated doctor whose certification was not contrary to the great weight of the other medical evidence based on evidence presented by the respondent (carrier).

The claimant appealed, contending that the designated doctor had changed his mind and had assessed a 20% IR and attaching additional medical reports. The file does not contain a response from the carrier.

DECISION

The hearing officer's decision has become final pursuant to Section 410.169 because the claimant's appeal was not timely filed with the Texas Workers' Compensation Commission (Commission).

Section 410.202(a) provides that to appeal the decision of a hearing officer, a party shall file a written request for appeal with the Appeals Panel not later than the 15th day after the date on which the decision of the hearing officer is received from the division and shall on the same date serve a copy of the request for appeal on the other party. Section 410.202 was amended effective June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code from the computation of time in which to file an appeal or a response. Section 410.202(d). Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(e) (Rule 143.3(e)) (formerly Rule 143.3(c)) provides that a request for review shall be presumed to be timely filed if it is: (1) mailed on or before the 15th day after the date of receipt of the hearing officer's decision; and (2) received by the Commission not later than the 20th day after the date of receipt of the hearing officer's decision. Both portions of Rule 143.3(e) must be complied with for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 020172, decided March 12, 2002. Rule 102.5(d) provides in pertinent part that, for purposes of determining the date of receipt for those written communications sent by the Commission which require the recipient to perform an action by a specific date after receipt, unless the great weight of the evidence indicates otherwise, the Commission shall deem the received date to be five days after the date mailed.

Records of the Commission reflect that the hearing officer's decision was mailed to the claimant on October 13, 2004. The cover letter to the hearing officer's decision contains the same address for the claimant as is shown as the claimant's return

address on the envelope in which he mailed his appeal. Pursuant to Rule 102.5(d), the claimant is deemed to have received the hearing officer's decision on October 18, 2004, unless the great weight of the evidence indicates otherwise. The claimant in his appeal does not state when he received the hearing officer's decision. The 15th day after the claimant's deemed date of receipt, excluding Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code, was November 8, 2004. The envelope in which the claimant mailed his appeal to the Commission contains a United States postage paid sticker dated December 1, 2004. Since the claimant's request for appeal was mailed to the Commission after November 8, 2004, it was not timely filed with the Commission. Section 410.169 provides in pertinent part that a decision of a hearing officer regarding benefits is final in the absence of a timely appeal by a party.

The hearing officer's decision and order have become final under Section 410.169.

The true corporate name of the insurance carrier is **WAUSAU UNDERWRITERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RICK KNIGHT
105 DECKER COURT, SUITE 600
IRVING, TEXAS 75062.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Margaret L. Turner
Appeals Judge